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An act to amend Sections 11040, 11041, 11042, and 11045 of, and to
repeal Section 11043 of, the Government Code, relating to legal services.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11040 of the Government Code is amended to read:

~~11040. (a) This article does not affect the right of any state agency or employee to employ counsel in any matter of the state, after first having obtained the written consent of the Attorney General.~~

~~(b)~~

11040. (a) It is the intent of the Legislature that overall efficiency and economy in state government be enhanced by employment of the Attorney General as counsel for the representation of state agencies and employees in judicial and other administrative proceedings.

The Legislature finds that it is in the best interests of the people of the State of California that the Attorney General be provided with the resources needed to develop and maintain the Attorney General's capability to provide competent legal representation of state agencies and employees in any judicial or administrative proceeding.

(b) As used in this article:

(1) "In-house counsel" means an attorney authorized to practice law in the State of California who is a state employee, including an excluded or exempt employee, other than an employee of the Office of the Attorney General.

(2) "Outside counsel" means an attorney authorized to practice law in the State of California who is not a state employee, including an excluded or exempt employee.

(c) Except with respect to employment by the state officers and agencies specified by title or name in Section 11041 or when specifically waived by statute other than Section 11041, a state agency shall obtain the written consent of the Attorney General



is required prior to employment of counsel for representation of any state before doing either of the following:

(1) Employing in-house counsel to represent a state agency or employee in any judicial or administrative proceeding.

(2) Contracting with outside counsel.

(d) Except as limited by paragraph (1) of subdivision (c), a state agency may employ in-house counsel for any purpose. This subdivision shall apply retroactively to the employment of any in-house counsel by any state agency before the operative date of the act adding this subdivision.

(e) This article does not prohibit a state agency from obtaining legal services from the Attorney General for any purpose.

(f) Consistent with subdivision (d), and except as may conflict with contrary authorization by statute, a state agency may employ in-house counsel for advice or other legal work related to bonds or other evidences of indebtedness, but shall engage the Attorney General, alone or with other counsel as may be authorized by statute, for the purpose of delivering any approving legal opinion on bonds or other evidences of indebtedness and related advice. The Attorney General may waive the requirement under this subdivision.

SEC. 2. Section 11041 of the Government Code is amended to read:

11041. (a) ~~Sections Section 11042 and 11043 do~~ does not apply to the Regents of the University of California, the Trustees of the California State University, Legal Division of the Department of Transportation, Division of Labor Standards Enforcement of the Department of Industrial Relations, Workers' Compensation Appeals Board,



Public Utilities Commission, State Compensation Insurance Fund, Legislative Counsel Bureau, Inheritance Tax Department, Secretary of State, State Lands Commission, Alcoholic Beverage Control Appeals Board (except when the board affirms the decision of the Department of Alcoholic Beverage Control), State Department of Education, and Treasurer with respect to bonds, nor to any other state agency which, by law enacted after Chapter 213 of the Statutes of 1933, is authorized to employ legal counsel.

(b) The Trustees of the California State University shall pay the cost of employing legal counsel from their existing resources.

SEC. 3. Section 11042 of the Government Code is amended to read:

11042. ~~No state agency, commissioner, or officer~~ agency shall employ any legal in-house counsel ~~other than the Attorney General, or one of his assistants or deputies, to act on behalf of the state agency or its employees in any matter judicial or administrative proceeding in which the agency, commissioner, or officer~~ agency is interested, or is a party as a result of office or official ~~duties, duties, or contract with outside counsel for any purpose, unless the agency has first obtained the written consent of the Attorney General pursuant to Section 11040.~~

SEC. 4. Section 11043 of the Government Code is repealed.

~~11043. Except as to the State agencies and laws specified in Section 11041, whenever any law authorizes any State agency to employ legal counsel other than the Attorney General, it shall be construed to refer to the Attorney General. The Attorney General may assign to the State agency assistants or deputies from his staff, under such terms as he deems necessary to conduct the legal business of or render legal counsel to the agency.~~



SEC. 5. Section 11045 of the Government Code is amended to read:

11045. (a) (1) Whenever a state agency requests the consent of the Attorney General to ~~employ~~ contract with outside counsel, as required by ~~Section 11040, Sections 11040 and 11042~~, the state agency shall within five business days of the date the request is transmitted to the Attorney General provide the designated representative of State Employees Bargaining Unit 2 with written notification of the request. The notice shall include the items enumerated in subdivision (d).

(2) All state agencies, other than the office of the Attorney General, that are not required to obtain the consent to contract with outside counsel required by paragraph (2) of subdivision (c) of Section 11040, 11040 and Section 11042, shall provide written notice of any proposed contract for outside ~~legal~~ counsel to the designated representative of State Employees Bargaining Unit 2 five business days ~~prior to~~ before execution of the contract by the state agency. The notice shall include the items required by subdivision (d). In the event of an emergency that requires the immediate employment of outside counsel, the state agency shall provide the written notice no later than five business days after the contract with outside counsel is signed.

(3) Whenever the Attorney General determines the need to employ outside ~~legal~~ counsel pursuant to subdivision (b) of Section 12520, the Attorney General shall give written notice to the designated representative of State Employees Bargaining Unit 2 within 10 days of that determination. The notice shall include the items enumerated in subdivision (d).



(b) The Attorney General shall provide the designated representative of State Employees Bargaining Unit 2 with a written report, at least monthly, of all consents granted to every state agency pursuant to Section 11040.

(c) Notwithstanding the above notice requirements, whenever any state agency submits a proposed contract for outside counsel to the Department of General Services pursuant to Section 10335 of the Public Contract Code, the agency shall provide a copy of the contract to the designated representative of State Employees Bargaining Unit 2.

(d) "Written notice" within the meaning of this section shall include, but not be limited to, all of the following:

(1) A copy of the complaint or other pleadings, if any, that gave rise to the litigation or matter for which a contract is being sought, or other identifying information.

(2) The justification for the contract, pursuant to subdivision (b) of Section 19130.

(3) The nature of the legal services to be performed.

(4) The estimated hourly wage to be paid under the contract.

(5) The estimated length of the contract.

(6) The identity of the person or entity that is entering into the contract with the state.

(e) "State agency," as used in this section, means every state office, department, division, bureau, board, or commission, including the Board of Directors of the State Compensation Insurance Fund, but does not include the Regents of the University of California, the Trustees of the California State University, the Legislature, the courts, or any agency in the judicial branch of government.



(f) (1) The notice requirements of this section do not apply to contracts for expert witnesses or consultations in connection with a confidential investigation or to any confidential component of a pending or active legal action.

(2) The exemption authorized in paragraph (1) shall only apply as long as necessary to protect the confidentiality of the investigation or the confidential component of a pending or active legal action.

(3) Disclosures made pursuant to this section are deemed to be privileged communications for purposes of subdivision (c) of Section 912 of the Evidence Code, and shall not be construed to be a waiver of any privilege or exemption provided by law, including, but not limited to, the lawyer-client privilege, as described in Section 952 of the Evidence Code, or attorney work product, as described in Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding or other written agreement reached pursuant to Section 3517 or 3517.5, the memorandum of understanding or agreement shall be controlling without further legislative action, except that if any provision of the memorandum of understanding or other agreement requires the expenditure of funds, the provisions may not become effective unless approved by the Legislature.



LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: Legal services.

Existing law requires certain state agencies to obtain written consent from the Attorney General before employing legal counsel in any judicial proceeding.

This bill would, instead, require certain state agencies to obtain the written consent of the Attorney General before employing in-house counsel to represent those agencies in any judicial or administrative proceeding and before contracting with outside counsel. The bill would otherwise generally authorize a state agency to employ in-house counsel for any purpose, except that it would require a state agency to use the Attorney General for the purpose of delivering approving legal opinions on bonds or other evidence of indebtedness, unless the Attorney General waives that requirement.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

